IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 474 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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FULBHARTHI BALUBHARTHI

Versus

UMEDBHARTHI VALABHARTHI

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Appearance:

1. Civil Revision Application No. 474 of 1997

MR SURESH M SHAH for Petitioner No. 1

MR VH KANARA for Respondent No. 1

MR BP MUNSHI for Respondent No. 1

NANAVATI ASSOCIATES for Respondent No. 1

NOTICE SERVED for Respondent No. 2

NOTICE UNSERVED for Respondent No. 3

MR MEHUL S SHAH for Respondent No. 4

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CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 19/12/2002

ORAL JUDGEMENT

In this matter, an order was dictated on 18.12.2002 taking the view that since the impugned order is an interim order and the Reg. Civil Suit No. 91/1995 is still pending before the trial court, the present revision application is not maintainable in view of the amendment made in sec. 115 of CPC. Thereafter, before the order is signed, Mr. Mehul S. Shah ld. advocate appearing for the respondent no. 4 who is supporting the petitioner in the present matter submitted that the Hon'ble Supreme court has admitted one SLP involving the identical point and stay was granted. He has also invited the attention of the Curt to the decision of the Hon'ble Supreme Court in the case of D.K. Trivedi & Sons vs. State of Gujarat, AIR 1986 SC 1323, wherein at page 1362, the Hon'ble Supreme Court has observed that if the High Court thought that the point raised by the appellants was the same as was pending in this Court, it ought to have stayed the hearing of the writ petitions until this court disposed of the other matters. In view of this submission, the matter was adjourned to today i.e. 19.12.2002 for further hearing in the matter.

Heard Mr. Suresh M. Shah, ld. advocate appearing for the petitioner, Mr. KS Nanavati ld. Senior counsel appearing for respondent no. 1 and Mr. Mehul S. Shah, ld. advocate appearing for the respondent no. 4.

The present revision application is filed against the order passed by the ld. Extra Assistant Judge, Jamnagar in Civil Misc. Appeal No. 1/1997 on 17.3.1997 confirming the order passed by the ld. Civil Judge (JD) Dwarka on 21.12.1996 below an application ex. 5 in Reg. Civil Suit No. 91/1995.

The brief facts giving rise to the present petition are that the respondent no. 1/ori. plaintiff has filed Reg. Civil Suit No. 91/1995 before the Court of Civil Judge (JD) Dwarka for a declaration and permanent injunction against the present petitioner who is the ori. defendant no. 1 and present respondents no. 2 to 4 who are the ori. defendants no. 2 to 4 on the ground that all of them are admittedly the descendants of a common-ancestor-viz. Motibharthi. Along with the said suit, the present respondent no. 1 has preferred an application ex. 5 for granting interim injunction restraining the defendants from interfering in his turn of seva-puja. Ld. trial judge has passed an order on 21.12.1996 granting interim injunction as prayed for in

an application exh. 5.

The said order was challenged by the present petitioner as well as respondent no. 4 before the 3rd Extra Assistant Judge, at Jamnagar in Civil Misc. Appeal nO. 1/1997. While disposing of the said appeal on 17.3.1997, ld. Assistant Judge has held that since the present respondent no. 1 did not want to change the management of the suit temple nor did he wants to interfere with the administration of the Trust. The respondent no.1 has simply claimed to restrain the present petitioner from interfering with his right to recover the offerings which was established as Pujari-cum-Trustee according to the registration under the Public Trust and in this view of the matter, it could not be said that the suit filed by the present respondent no. 1 was for alteration in the scheme of Trust. The Ld. Assistant Judge has further observed that on the basis of the documentary evidence, it appears that the ld. trial judge has properly and rightly considered the documentary evidence and affidavit made by the deponent in favour of present respondent no. 1 and the circumstances that previous litigations were brought on record, there was no need to interfere with the conclusion recorded by the ld. trial judge. In this view of the matter, it was held that the ld. trial judge has not committed any illegality in allowing the interim injunction application of the present respondent no. 1. Ld. Assistant Judge has further observed that the respondent no. 1 did not intend to create or claim the right of Pujari-cum-Trustee for the first time before the civil court but respondent no. 1 has claimed his right of Pujari-cum-Trustee under the mode of succession recorded before the Charity Commissioner and, therefore, if the present petitioner interferes against the respondent no. 1 then the respondent no. 1 can certainly bring the suit to restrain the present petitioner from interfering with his right to recover his share from the offerings made to the suit temple. The appeal preferred by the present petitioner as well as respondent no. 4 was, therefore, dismissed by the ld. Assistant Judge. It is, this order which is under challenge before this court in the present revision application.

Heard Mr. Shuresh M. Shah and Mr. Mehul S. Shah ld. advocate appearing for the petitioner as well as respondent no. 4 respectively. Mr. Shah mainly raised two fold contentions while challenging the orders of the courts below. His main argument is that the civil court has no jurisdiction to entertain the suit filed by

the present respondent no. 1 and it is clearly barred under sec. 9 of CPC. When the suit itself is not maintainable, there is no question of granting any interim relief. In support of this contention, he has invited my attention to sec. 50 of Bombay Public Trust Act, 1950, which reads as under:

Sec.50: Suits relating to public trusts.-In any case-

(i) where it is alleged that there is a breach of a public trust,

(ii) [where a direction is required to recover possession of a property belonging to a public trust] [ or the proceeds thereof or for an account of such property or proceeds] from any person including a person having adversely to the public trust, or

(iii) where the direction of the court is deemed necessary for the administration of any public trust,

the Charity Commissioner [after making such enquiry as he thinks necessary] or two or more persons having an interest in the trust and having obtained the consent in writing of the Charity Commissioner as provided in section 51 may institute a suit whether contentions or not in the Court within the local limits of whose jurisdiction the whole or part of the subject-matter of the trust is situate, to obtain a decree for any of the following reliefs:-

(a) an order for the recovery of the possession of such property [or proceeds thereof].

(b) the removal of any trustee or manager,

(c) the appointment of a new trustee or manager,

[(cc) vesting any property in a trustee,]

(d) a direction for taking accounts and making certain inquiries,

(e) a declaration as to what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust,

(f) a direction authorising the whole or any part of the trust property to be let, sold, mortgaged or exchanged,

(g) the settlement of a scheme or variations or alterations in a scheme already settled, or

(h) granting such further or other relief as the nature of the case may require:

Provided that no suit claiming any of the reliefs specified in this section shall be instituted in respect of any public trust except in conformity with the provisions thereof:

[Provided further that the Charity Commissioner may, instead of instituting a suit, make an application to the Court for a variation or alteration in a scheme already settled.]

Mr. Shah has submitted that the matters referred to in this section are within the exclusive jurisdiction of the Charity Commissioner and civil court has no jurisdiction to entertain any claim or dispute made in respect thereof. In support of this contention, he has relied on the decision of the Supreme Court in the case of Kanbi Manji Abji & Ors. vs. Kanbi Vaghji Mavji & Ors., reported in 1994(1) GLR p. 479, wherein it is held that by claiming a right to have the idols and portraits in the Dharamshala hall and also the right to read the books propounded by the followers of Abji Bapa, the respondents-plaintiffs in pith and substance are asking for alterations in the scheme of the trust already settled. In any case, the right of trustees to decide the place where devotees would recite the scriptures and also the place where the idols and portraits are to be installed has been questioned in the suit. The respondents-plaintiffs are indirectly trying to interfere with the management of the temple. The main purpose of the suit filed by the followers of Abji Bapa is to establish the superiority of their sect and impose their way of thinking and worship in the management of the temple and as a consequence in the administration of the trust. In this view of the matter, there is no escape from the finding that the suit falls within the purview of sec. 50 of the Trusts Act, and as such the trial court rightly dismissed the same.

Mr. Shah has further submitted that while considering the application for interim relief, the courts below ought to have considered the petitioner's contentions with regard to the maintainability of the suit. In this context, he relied on the decision of the Supreme Court in the case of Bank of Maharashtra vs. Race Shipping & Transport Co. Pvt. Ltd. and Anr., reported in AIR 1995 SC 1368, wherein it is held that the objections that have been raised by the appellant-bank against the maintainability of the writ petition are not such that they may be disregarded as lacking in substance. This is a factor which has a bearing on the exercise of discretion by the court while passing the interim order in the writ petition. Mr. Shah has therefore, submitted that in view of the provision contained in sec. 50 of the Bombay Public Trusts Act as well as in view of the decision of the Supreme Court in the case of Kanbi Manji Abji & Ors. vs. Kanbi Vaghji Mavji & Ors. (supra), the civil court has no jurisdiction to entertain the suit and yet the trial court has granted interim relief which has been confirmed by the appellate court. Both the courts below, therefore, have committed jurisdictional error and this court should therefore, entertain the present revision application and vacate the interim relief granted in favour of the present respondent no. 1.

With regard to the merits of the matter, Mr. Shah has submitted that the courts below have not properly appreciated the documents produced before them and, there was no proper application of mind and that finding based on the erroneous reading of the documents is absolutely perverse finding and that can certainly be interfered with by this Court while exercising the revisional jurisdiction under sec. 115 of CPC.

On the other hand, Mr. KS Nanavati ld. senior advocate appearing for the respondent no. 1 submits that the impugned order is an interim order and the suit is still pending before the trial court. In view of the amendment made in sec. 115 of CPC, the present revision application is not maintainable.He has further submitted that there is concurrent finding given by both the courts below and, there is settled legal position that the said finding should not be disturbed by the superior court while exercising the revisional jurisdiction under sec. 115 of CPC. In any case, the question regarding jurisdiction is a mixed question of law and facts and the same can be decided only after under going the full-fledged trial. He has further submitted that the ld. trial judge is right in observing that right to

worship is a civil right and the present respondent no. 1 has not made any prayer with regard to join him as a Trustee or Pujari, hence, it cannot be said at this stage that he has tried to interfere in the administration and management of the trust property. Hence, there is no bar of section 50 as well as sec. 80 of the Bombay Public Trusts Act. Even with regard to the merits of the matter, the ld. trial judge has rightly come to the conclusion that the present respondent no. 1 as well as petitioner are the heirs of Hirabharathi whereas the present respondent no. 4 is the heir of Ramabharathi and present respondents no. 2 and 3 are also heirs of very branch i.e. Ramabharathi. If during the turn of present respondent no. 4, the present respondents no. 2 and 3 are allowed to offer their worship, the present respondent no. 1 can also have the right to offer worship during the turn of heirs of Ramabharathi. Such hereditary rights are to be given to the present respondent no. 1 also. Ld. trial judge has also referred to other proceedings and on the basis of those documentary evidences, he has come to the conclusion that the present respondent no. 1 was having a right to offer worship and he was also having his interest during the turn of the present petitioner. Of course, he has arrived at this prima-facie conclusion, which cannot be said that it is not based on any documentary evidence or finding arrived at by him was perverse or in any case, he has decided the issue without jurisdiction. IN this view of the matter, Mr. Nanavati has strongly supported the order passed by both the courts below and submitted that the present revision application should be rejected with costs.

I have gone through the records and I have also considered the arguments canvassed by both the parties. I have also given by serious thoughts to the authorities relied on by Mr. Shah ld. advocate appearing for the petitioner. I am of the view that the present revision application is filed against the interim order, and the suit is still pending. The amendment made in sec. 115 of CPC is very clear. By virtue of the order being reversed by this Court or an order be passed in favour of the present petitioner, the suit would not have come to an end and in this view of the matter, the revision application is not maintainable. The reliance placed by Mr. Shah on the order of the Supreme Court in SLP (Civil) No. 21181/2002 dated 22.11.2002, wherein the Supreme Court has issued notice and interim order granted by the High Court was continued till further orders. It does not render any assistance to the present petitioner in the present matter as in that case, the civil revision

application was rejected by this Court on the ground that it is not maintainable, however, while entertaining SLP against the said order, the Hon'ble Supreme court has not stayed the order of operation and implementation passed by this court but only the stay granted by this Court was ordered to be continued. There is basic difference between the present matter and the matter before the Hon'ble Supreme Court as in this case, the court is of the view that not only the civil revision application is not maintainable on the ground that the proceedings are not finally terminated, it is also not maintainable on the ground that there is concurrent finding and the scope of revisional jurisdiction under sec. 115 of CPC is very limited. The court is also of the view that the question of jurisdiction is a mixed question of law and facts and before arriving at the conclusion that the trial court has no jurisdiction to entertain the suit, a full-fledged trial is required so as to bring out the correct investigation of the facts and application of those facts to the issue raised in the suit. Keeping this aspect in mind, the trial court has come to the conclusion that at this stage, it was difficult to hold as to whether the trial court has jurisdiction or not, in my opinion, it cannot be said that the trial court has committed any jurisdictional error. The appellate court is also justified in confirming the finding arrived at by the trial court. Even with regard to merits of the matter, both the courts below have taken concurrent view which cannot be interfered in the present revision application.

Taking overall view of the matter, I am of the view that the trial court is justified in granting interim injunction in favour of respondent no. 1 and also the appellate court is justified in confirming the said order of the trial court. In this view of the matter, the present revision application is rejected. Rule is discharged with no order as to costs.

Since this court has granted interim order and the same is in operation, the said interim relief is ordered to be continued till 15.2.2003 so as to enable the petitioner to take appropriate action challenging this order.

Since this Civil Revision Application is rejected, the Civil Application NO. 8241/2001 does not survive and is disposed of accordingly.

(K.A. PUJ, J.)

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